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10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 **SAN FRANCISCO DIVISION**

14 **IN RE GOOGLE PLAY STORE**
15 **ANTITRUST LITIGATION**

16 THIS DOCUMENT RELATES TO:

17 *Epic Games, Inc. v. Google LLC et al.*, Case
No. 3:20-cv-05671-JD

Case No: 3:21-md-02981-JD

**NON-PARTY SUPERCELL OY'S
REQUEST TO SEAL COURTROOM
AND PORTIONS OF EXHIBIT 1525**

Judge: Hon. James Donato

1 Pursuant to Civil Local Rule 79-5 and the Court's Order, Dkt. No. 727, Non-Party
 2 Supercell Oy ("Supercell") respectfully requests that the Court treat as sealed the non-public,
 3 highly confidential information in certain portions of Trial Exhibit 1525 identified below and
 4 provided to counsel for Google by email, either by sealing the courtroom during the introduction
 5 of, and testimony about, the information or at minimum by (1) publishing such information to the
 6 jury and Court alone and not to the courtroom gallery or general public, and (2) preventing
 7 statement of the information during the course of trial. Supercell also requests that, to the extent
 8 Trial Exhibit 1525 is filed in this action, that the portions identified below be filed under seal.

9 As an initial matter, Supercell was not given reasonable notice of the intended use of Trial
 10 Exhibit 1525. The Protective Order in this case requires at least four business days' notice of the
 11 intent to use such material. But Supercell personnel first learned that Trial Exhibit 1525 may be
 12 used on November 8 in open court only on the morning of Tuesday, November 7, Helsinki
 13 Time—where its relevant employees work. Notice was *not* provided to Supercell's outside legal
 14 counsel in the U.S. who have handled repeated subpoenas to Supercell and filed numerous
 15 statements supporting motions to seal Supercell documents and information in this case.
 16 Supercell was thus not provided proper notice of, or opportunity to respond to, potential disclosure
 17 of its highly confidential information.¹ Supercell has filed this request to comply with the Court-
 18 ordered deadline for such requests and plans to supplement the submission with a forthcoming
 19 client declaration that it was unable to submit at this time, given the lack of notice and significant
 20 time zone differences described above.

21 In all events, compelling reasons exist to seal Supercell's highly confidential and
 22 proprietary business information in Trial Exhibit 1525. Specifically: (i) Supercell has legitimate
 23 interests in maintaining the confidentiality of its sensitive business information; (ii) revealing this
 24 information publicly would provide an advantage to Supercell's competitors and Defendants'
 25

26 ¹ Supercell received similar last-minute notice to the same general email address regarding
 27 potential use at trial of Trial Exhibits 151, 360, and 384. Supercell requested that the parties
 28 publish those materials only to the jury and courtroom, not to the general public, and objected to
 any public filing of Supercell's highly confidential information in those documents.

1 competitors adverse to Supercell, or otherwise harm Supercell's business; and (iii) there is no less
2 restrictive alternative sufficient to protect Supercell's legitimate interests than the sealing
3 proposed by Supercell in this request. *See* Civ. L.R. 79-5(c)(1). Moreover, Supercell has filed
4 two other statements and declarations in this matter seeking sealing of its highly confidential and
5 proprietary business information. Dkt. Nos. 562, 617. Supercell maintains that those materials
6 and other Supercell highly confidential materials used at trial should remain sealed and not
7 disclosed to the public, even if the tight trial turnaround schedule and the parties' late notifications
8 prevent Supercell from submitting declarations to support non-disclosure and sealing by the
9 Court's deadlines.

10 A review of Trial Exhibit 1525 shows that both the portions of the document highlighted
11 by counsel for Google, and additional portions of the document contain Supercell's highly
12 confidential information (identified below and provided to Google by email, which Supercell can
13 also provide to the Court under seal if useful). This includes information that reflects highly
14 confidential/sensitive business information relating to Supercell's business relationship and
15 contracts with Google, and assessments and reflections by Supercell on its products, business,
16 business plans, and business trajectory, and highly sensitive financial information, that Supercell
17 keeps confidential in the ordinary course of its business and under contract with Google. *See* Dkt.
18 Nos. 562-1, 617-1. Supercell views this information as confidential and sensitive business and
19 financial information, has not made it public (nor is it public, to Supercell's knowledge), and the
20 disclosure of this information is likely to result in substantial competitive or commercial
21 disadvantage to Supercell. If these portions of the Trial Exhibit were to be made public,
22 Defendants' competitors (for example, platforms operated by third parties competitive with
23 Defendants where Supercell offers its games) could glean information about Supercell's business
24 relationship with Defendants and use this information in negotiations with Supercell to gain a
25 competitive advantage at Supercell's expense. Disclosure of this information would also likely
26 harm Supercell by harming its bargaining position with third party platforms, and could give its
27 competitors the ability to undercut Supercell and unfairly win additional business. The chart
28 below summarizes the basis for Supercell's sealing request as to each portion of Trial Exhibit

1 1525 (GOOG-PLAY-009201648) (Email chain “Re: Privileged – Supercell”):

2 Portion to be sealed	Reason(s) for sealing request
3 Page Exhibit 1525-001, highlighted portion 4 of sentence beginning “Regarding localized”	Contains competitively sensitive information regarding Supercell’s relationship and negotiation of business terms with Google, and Supercell business strategy.
5 Pages Exhibit 1525-001 to 002, from 6 highlighted bullet “Emerging markets” on 7 001 to “explore separately” on 002, and highlighted portions in last paragraph on 002	Contains competitively sensitive information regarding Supercell’s relationship and negotiation of business terms with Google, and Supercell business strategy and strategic planning.
8 Page Exhibit 1525- 003, highlighted 9 portions, paragraph beginning “Please see below” and bullet points from “GVP insights” to bottom of page.	Contains competitively sensitive information regarding Supercell’s relationship and negotiation of business terms with Google, and Supercell business strategy and strategic planning.
10 Page Exhibit 1525-004, in its entirety	Contains competitively sensitive information regarding Supercell’s relationship and negotiation of business terms with Google, and Supercell business strategy, product strategy, product assessment, and strategic planning.
11 Page Exhibit 1525-005, first bullet, 12 paragraphs beginning 13 “Supercell indicated”, “Thank you for the 14 update,” “Qq,” and “A quick update on the 15 Supercell call.”	Contains competitively sensitive information regarding Supercell’s relationship and negotiation of business terms with Google, and Supercell business strategy, product assessment and planning, and strategic planning.
16 Page Exhibit 1525-008, highlights in the 17 paragraph beginning “I sent a quick note”, 18 the entire paragraph beginning “As a heads 19 up,” “Thanks for the update on 20 Supercell’s,” and the final paragraph and bullet on the page.	Contains competitively sensitive information regarding Supercell’s relationship and negotiation of business terms with Google, and Supercell business strategy, product planning and strategic planning.
21 Page Exhibit 1525-009, first two bullets on 22 the page, fourth and fifth bullets on the 23 page (beginning “opportunity” and “Play”), last two paragraphs on the page	Contains competitively sensitive information regarding Supercell’s relationship and negotiation of business terms with Google, and Supercell business strategy and strategic planning.
24 Page Exhibit 1525-010, first three 25 paragraphs on the page	Contains competitively sensitive information regarding Supercell’s relationship and negotiation of business terms with Google, and Supercell business strategy, product assessment and plans, and strategic planning.

27 The Federal Rules contemplate sealing information like the above that reflects confidential
28 business development practices and competitively sensitive information, and courts routinely seal

1 such information. *See, e.g.*, Fed. R. Civ. P. 26(c)(1)(G) (a Court may order that “trade secret or
 2 other confidential research, development, or commercial information not be revealed”); *Space*
 3 *Data Corp. v. Alphabet Inc.*, No. 16-CV-03260-BLF, 2019 WL 8012582, at *1 (N.D. Cal. July 17,
 4 2019) (sealing information including confidential business development practices, competitively
 5 sensitive information, and sensitive information pertaining to third party partners, whose
 6 disclosure could expose the party to competitive harm). As a non-party to this litigation,
 7 Supercell’s interests in safeguarding its highly confidential information are particularly strong. *See*
 8 *In re Adobe Systems, Inc. Sec. Litigation*, 141 F.R.D. 155, 161-62 (N.D. Cal. 1992). Likewise,
 9 this Court has previously held in this matter that sealing is appropriate for “specific deal terms that
 10 might be used against [an entity] in other negotiations and deals,” exactly the type of Supercell
 11 information at issue here. *See In re Google Play Store Antitrust Litigation*, Order re Motion to
 12 Stay and Renewed Application to Seal, Case No. 3:21-cv-05227-JD, ECF No. 140 (N.D. Cal. Aug.
 13 25, 2021). Supercell’s request to seal its information is narrowly tailored because it proposes to
 14 seal only the information necessary to protect Supercell’s legitimate interests, namely that
 15 identified above.

16 For these reasons, Supercell respectfully requests that the Court grant Supercell’s request
 17 that the above-identified portions of Trial Exhibit 1525 be treated as sealed, either by sealing the
 18 courtroom for their introduction or by displaying them only to the Court and jury and preventing
 19 statements of the information during trial.

20 Dated: November 7, 2023

21 Respectfully submitted,

22 /s/ Ciara McHale
 23 Ciara McHale

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 28 Attorneys for Non-Party
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